



A First Data Company

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#37

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VIA FEDERAL EXPRESS
and FACSIMILE (202) 622-1974

Office of the Fiscal Assistant Secretary
U.S. Department of the Treasury
Room 2112
1500 Pennsylvania Avenue NW
Washington, DC 20220
Attn: Gary Sutton

RE: Possible Regulation Regarding Access to Accounts at Financial
 Institutions Through Payment Service Providers

Ladies and Gentlemen:

Western Union Financial Services, Inc. ("Western Union") appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking Relating to Access to Accounts at Financial Institutions Through Payment Service Providers (the "Notice").¹ As one of the best-known financial services companies in the U.S., Western Union provides consumers and businesses with electronic and paper-based systems for transferring funds or making payments. The company is credited with having introduced the age of electronic commerce by launching the first electronic money transfer services in 1871. Today, Western Union is a leader in the funds transfer and payment services industries, transferring funds in minutes through a network of over 55,000 agent locations in more than 160 countries and issuing (either directly or through affiliates) more than 250,000,000 personal money orders every year. Western Union's customers include individuals without traditional banking relationships and expatriates who need to send money to their country of origin— what Western Union refers to as the "cash-based society"— as well as traditional bank customers in need of rapid money transfer services or safe and reliable payment instruments.

In the Notice, Treasury requested comments on three specific issues. Our responses to these requests are set forth below.

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See 64 Fed. Reg. 1149 (January 8, 1999).

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1. Treasury Requested Comment #1: Should Treasury regulate or prohibit arrangements between financial institutions and payment service providers in which electronic federal payments are deposited into a recipient's non-ETA account at a financial institution but made available to the recipient through a payment service provider.

Western Union generally supports the regulation of arrangements between financial institutions and payment service providers involving the electronic transfer of federal payments into a recipient's non-ETA account at a financial institution that are made available to the recipient through a non-bank payment service provider ("Bank-PSP Arrangements"). However, Western Union believes that any regulation of Bank-PSP Arrangements should be limited to ensuring that government benefits recipients are provided with meaningful disclosures that will enable them to make an informed choice regarding their options for receiving the proceeds of their benefits payment. Western Union believes that Bank-PSP Arrangements have the potential for providing convenient, cost-effective options to consumers who voluntarily elect to utilize these arrangements to receive distributions of their benefits payments. Accordingly, Western Union objects to any regulation that would have the effect of reducing the options available to government benefits recipients, and believes that such regulation, if enacted, would be detrimental to the interests of many benefits recipients.

As discussed in further detail below, Western Union believes that most Bank-PSP Arrangements are already subject to substantial regulation under existing law, including the Federal Truth-in-Savings Act and implementing Regulation DD, the Electronic Funds Transfer Act and implementing Regulation E, state financial services laws and regulations, and general statutory and common law principles against unfair and deceptive trade practices. As an alternative to a formal regulation, Western Union respectfully requests that Treasury consider adopting a policy statement which consolidates the various laws and regulations to which Bank-PSP Arrangements are already subject.

2. Treasury Requested Comment #2: Do such arrangements deny the recipient either: (a) an account at a financial institution; (b) access to such account; (c) access at a reasonable cost; or (d) the same consumer protections with respect to the account as other account holders at the same institution?

Western Union believes that all consumers have a right to choose where they obtain their financial services. In making their choice, Western Union's research indicates that consumers consider a myriad of factors, including out-of-pocket costs, convenience of location, hours of operation, personal service and security. This ability to choose is particularly important to

consumers residing in low and moderate income and rural areas, which have traditionally been underserved by banks and other financial institutions. Thus, Western Union believes that Bank-PSP Arrangements do not "deny" recipients an account at a financial institution since such recipients always have the right to access their benefits payments through a traditional financial institution account if they choose to do so. To the extent Treasury is concerned that benefits recipients who elect to utilize Bank-PSP Arrangements to receive their funds would be required to sign long-term contracts for these services, Western Union would not object to the development of regulations requiring that such arrangements be terminable by the consumer at will.

A primary concern of Treasury has been whether recipients that participate in Bank-PSP arrangements are subject to excessive fees. Western Union believes that whether a fee is "excessive" depends on numerous factors and varies from recipient to recipient, and is therefore a determination to be made by the individual consumer after proper disclosure by the bank and/or payment service provider. For example, some payment service providers offer night and weekend hours, or provide their services through face-to-face transactions as opposed to automated means. The additional costs incurred (including staffing, utilities and security) to offer these services may be substantial, and must naturally be passed on to the customer, who is willing to pay the additional fees because convenient locations, hours and personal service have value to them. Moreover, because many Bank-PSP Arrangements may allow the consumer to pick and choose among various service options and delivery mechanisms, the true cost to the consumer who elects to receive benefits payments through a Bank-PSP Arrangement may in many cases be less than comparable banking services or even the Treasury's proposed ETA.

Treasury has also expressed concern that recipients who participate in Bank-PSP Arrangements lose the benefit of certain consumer protections, such as federal deposit insurance and Federal Reserve Board's Regulation E. Western Union believes that the benefits of these protections may remain largely intact in most Bank-PSP Arrangements. For example, consider the "second arrangement" described in the notice, in which the financial institution receives a federal payment and credits it to the recipients account, which amount is immediately transferred to a pooled account in the name of the payment service provider. Assuming the payment service provider is a money transmitter (which would treat the funds as the electronic equivalent of an instrument for the transmission or payment of money, such as a money order or traveler's check), state regulations provide a number of safeguards for the recipients. The money transmitter must generally be licensed and bonded, is required to hold a minimum level of capital, may be required to hold reserves equal to 100 percent of the outstanding value of the instruments, and is subject to periodic examinations and audits. Thus, although instruments for the transmission of money are not federally insured, the benefits of protection against loss may nevertheless be substantially in

place in the form of funds earmarked for their payment. Notwithstanding, Western Union is in favor of clear and conspicuous disclosure to recipients as to whether their funds are federally insured.

Recipients that participate in the second arrangement also enjoy the benefits of Regulation E. The transfer of funds to the financial institution, and from the financial institution to the payment service provider, are subject to the rules and regulations governing the ACH Network and Regulation E, and pursuant thereto a recipient can withdraw his/her authorization for the transfer at any time. Further, any time a recipient uses an access device to access funds at an ATM or to obtain funds at a payment service provider agent location, the transaction is covered by Regulation E.² Regulation E generally limits a consumer's liability for unauthorized transfers to \$50, and requires the disclosure of fees, error resolution procedures, and other material terms prior to the first transaction.

Last, Western Union believes that most Bank-PSP Arrangements will afford benefits recipients with the same or substantially similar consumer protections as other account holders at the financial institution. Once funds have been withdrawn from the financial institution, however, the consumer should be free to use them to purchase whatever financial products or services they may desire. It would seem unduly intrusive for the federal government to attempt to impose restrictions, through the regulation or prohibition of Bank-PSP Arrangements, on the types of products or services that a benefits recipient may elect to purchase with their own funds after those funds have been withdrawn from a federally-insured depository institution. Thus, while Treasury certainly has an interest in ensuring that funds are distributed to benefits recipients in a responsible manner, it seems inappropriate for Treasury to try and restrict how those funds may be used once they become the property of the benefits recipient, assuming that the recipient is fully informed as to the products or services being purchased.

3. Treasury Requested Comment #3: *Should all payment service providers be subject to regulation, or only a particular subset, and if only a subset, what is the basis for such distinction?*

Western Union believes that most Bank-PSP Arrangements are already subject to extensive regulation, and is supportive of regulating all Bank-PSP Arrangements within the

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Regulation E applies to financial institutions that provide electronic funds transfers to consumers. "[A]ny . . . person . . . that issues an access device and agrees with a consumer to provide electronic funds transfer services" is a "financial institution" for purposes of Regulation E. 12 C.F.R. § 205.2(i). An "electronic fund transfer" includes automated teller machine transfers. 12 C.F.R. § 205.3(b)(2). An "access device" includes "a card . . . That may be used by the consumer to initiate electronic funds transfers." 12 C.F.R. § 205.2(a)(1).

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existing regulatory framework. In the event Treasury deems that additional regulation is necessary, however, Western Union believes that such regulation should be limited to ensuring that government benefits recipients are provided with meaningful disclosures regarding the costs and attributes of the particular arrangement. To the extent that Treasury proposes to go beyond disclosure requirements, Western Union requests that Treasury differentiate between Bank-PSP Arrangements that are by their nature already subject to substantial state or federal regulation and those Bank-PSP Arrangements that are not subject to regulatory oversight.


Conclusion

Western Union believes that additional regulation of Bank-PSP Arrangements is unwarranted at this time. However, if any additional regulation of these arrangements is deemed necessary by Treasury, such additional regulation should be limited to ensuring that government benefits recipients are provided with meaningful disclosures that will enable them to make an informed choice regarding their options for receiving the proceeds of their benefits payments. Western Union strongly opposes any regulation that would have the effect of reducing the current options available to government benefits recipients.

Further, Western Union believes that Bank-PSP Arrangements are already subject to substantial regulation under existing law. As an alternative to a formal regulation, Western Union respectfully requests that Treasury consider adopting a policy statement which consolidates the various laws and regulations to which Bank-PSP Arrangements are already subject.

Western Union would like to thank Treasury for the opportunity to comment on the Notice. Please do not hesitate to contact us for any additional information (or any assistance) in regard to the foregoing.

Very truly yours,



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APC/mbh